

Special Civil Application No 5381 of 1990

Date of decision: 05/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

RAMESHBHAI BAKUBHAI

vs

COMPETENT AUTHORITY & DEPUTY COLLECTOR (ULC), AHMEDABAD & ORS.

Appearance:

Shri M.J. Thakore, Senior Advocate, with Shri Amar N. Bhatt, Advocate, for the Petitioner

Shri D.N. Patel, Asst. Govt. Pleader, for the Respondents

Coram : MR.JUSTICE A.N.DIVECHA

#### ORAL JUDGEMENT

The order passed by the Competent Authority at Ahmedabad (respondent No.1 herein) on 10th March 1988 and communicated on 12th April 1988 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 31st May 1990 in Appeal No. Ahmedabad-251 of 1988 is under challenge in this petition under articles 226 and 227 of the Constitution of India. By his impugned order, respondent No.1 declared the holding of the petitioner to be in excess of the ceiling limit by 1275.82 square meters.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed his declaration in the prescribed form under sec. 6(1) of the Act with respect to his property situated within the urban agglomeration of Ahmedabad and also one property situated in Bombay. That form was duly processed by respondent No.1. After observing all necessary formalities according to law, by his order passed on 10th March 1988 under sec. 8(4) of the Act, respondent No.1 declared the holding of the petitioner to be in excess of the ceiling limit by 1275.82 square meters. Its copy is at Annexure A to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.2 under sec.33 of the Act. It came to be registered as Appeal No. Ahmedabad-251 of 1988. By the order passed on 31st May 1990 in the aforesaid appeal, respondent No.2 dismissed it. Its copy is at Annexure B to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under articles 226 and 227 of the Constitution for questioning the correctness of the order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition.

3. The grievance voiced by and on behalf of the petitioner in this petition is that there existed on the disputed land three separate dwelling units as a servant's quarters, a watchman's quarters and a driver's quarters and one garage-cum-servant's quarters. It has been urged on behalf of the petitioner that each dwelling unit housed in a separate building would be entitled to additional appurtenant land of 500 square meters in each case. If that be taken into consideration, runs the submission of learned counsel Shri Thakore for the petitioner, the petitioner will have no excess land in his holding. As against this, learned Assistant Government Pleader Shri Patel for the respondents has urged that the authorities below have, on the basis of the material on record, come to the conclusion that the construction of the servant's quarters, the driver's quarters and the watchman's quarters was not authorised though they were in existence prior to coming into force of the Act. In that view of the matter, according to learned Assistant Government Pleader Shri Patel for the respondents, this Court need not interfere with the impugned order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition.

4. It is not in dispute that the plan at Annexure H to this petition was on record before respondent No.1. He appears to have come to the conclusion that the aforesaid dwelling units for a servant and a driver and a watchman in separate buildings were not authorised as the same were not shown in the area table. It appears that respondent No.1 has misread the plan at Annexure H on the record of this petition. It clearly transpires therefrom that the plan was for proposed addition and

alteration to the existing bungalow earmarked as 'A'. The area table showed the area of the existing construction and not the proposed construction. It transpires from the plan at Annexure H to this petition that the proposed construction was for separate quarters for a servant, a watchman and a driver. Such proposed construction would certainly not figure in the area table giving the built-up area of the existing buildings on the land in question. It thus becomes clear that respondent No. 1 has misread the plan in question. It cannot be gainsaid that misreading of a material document on record would result into a perverse finding. In exercise of its writ jurisdiction under art. 226 of the Constitution of India, this Court can certainly upset a perverse finding.

5. Respondent No. 2 as the appellate authority does not appear to have looked at the plan at Annexure H to this petition on record before respondent No. 1. The contrary finding recorded by respondent No.1 regarding unauthorised construction of the aforesaid three dwelling units for a servant, a watchman and a driver can be said to be in ignorance of the material on record. That finding also has to be branded as perverse.

6. It cannot be gainsaid that the land appurtenant is available to each building housing one or more dwelling units. In its ruling in the case of Jayaganri Gokaldas Bhavnagar and others v. State of Gujarat and another reported in 1994(1) Gujarat Current Decisions 871 this Court has clearly held that each building housing one or more dwelling units would be entitled to separate land appurtenant to the tune of the additional area of 500 square meters. To the same effect is the clarification made by the Central Government vide its Circular Letter No. 1/132/76-UCU(vii) dated 12.1.1977 to which my attention has been invited on behalf of the petitioner. It is thus clear that each building housing a dwelling unit like a servant's quarters, a driver's quarters, a watchman's quarters and a servant's quarters-cum-garage will be entitled to the additional land appurtenant for each such building.

7. Such constructed properties together with the land appurtenant thereto will have to be excluded from the holding of the land-holder in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 Supreme Court 1567.

8. It transpires from the impugned order at Annexures A and B to this petition that the attention of the concerned authorities was not focussed on all these aspects of the matter. In that view of the matter, the impugned order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition will have to be quashed and set aside. The matter will have to be remanded to respondent No. 1

for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine.

9. Learned Counsel Shri Thakore has invited my attention to the decision of respondent No.1 with respect to another co-owner taken on 12th December 1994, a copy of which is annexed with the additional affidavit. It has been urged on behalf of the petitioner that, since respondent No.1 has accepted the plan in respect of another co-owner, this matter need not be remanded. If respondent No.1 has accepted such approved plans at Annexure H to this petition, the petitioner should not face any difficulty before respondent No.1 after remand.

10. In the result, this petition is accepted. The order passed by the Competent Authority at Ahmedabad (respondent No.1 herein) on 10th March 1988 and communicated on 12th April 1988 at Annexure A to this petition as affirmed in appeal by the appellate order passed by the Urban Land Tribunal at Ahmedabad on 31st May 1990 in Appeal No. Ahmedabad-251 of 1988 at Annexure B to this petition is quashed and set aside. The matter is remanded to respondent No.1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.